Committee on International Relations
Statement of Chairman Christopher H. Smith
Current Issues in U.S. Refugee Protection and Resettlement

May 10, 2006

The Subcommittee will come to order, and good morning to everyone.

Today the Subcommittee on Africa, Global Human Rights and International Operations will hold an oversight hearing on Current Issues in U.S. Refugee Protection and Resettlement. The hearing will focus on the major current challenges facing U.S.refugee protection and resettlement policy and programs, such as levels of funding, implementation of procedures to waive application of "material support" grounds for inadmissibility, application of the definition of "membership in a terrorist organization" and its affect on refugee resettlement, current status and implementation of the "wet foot/dry foot" policy, and status of implementation of the refugee provisions of the International Religious Freedom Act (IRFA) of 1998. The Subcommittee will consider what the U.S. has done in the past year to address these issues and what it intends to do in the coming year.

I would like to start by mentioning some of the encouraging progress concerning refugees and displaced persons. The peace deal recently signed by the largest Darfur rebel group and the government of Sudan can be the first step toward peace and stability in the region. I wish to commend President Bush's strong leadership on Darfur. Our first priority must be to help create a sense of security so that refugees and IDPs (internally displaced persons) can return to their homes and rebuild. President Bush's call for more peacekeepers is absolutely timely. But right now we need to get more humanitarian assistance and food to those suffering, and I welcome the President's intention to ask Congress for an additional $225 million in emergency food aid for Darfur, and his announcement that he has directed five US ships loaded with food to head to Port Sudan and that he has ordered the emergency purchase of another 40,000 metric tons of food for rapid shipment. This is on top of the more than $617 million in humanitarian assistance we have already given to help ease the suffering of those most affected by the conflict, and more than $150 million we have contributed to support the African Union mission in Darfur. It has been American aid, first, second and third that has fed and cared for the refugees. Other major donors have not yet come through, and must do so now. The President's decisive actions will help convince the international community to give more, and do more, to end the misery in Darfur. I led a mission to the IDP camps in Darfur and met face-to-face with President Bashir this past August. No one who has been to Darfur can doubt the urgency of decisive action.

On Friday, Secretary of State Rice announced the long-awaited waiver, which will allow us to finally begin the resettlement of the Burmese refugees in Thailand. Much more needs to be done, to protect and resettle the refugees, but most of all to convince the Burmese Junta to desist from its brutal practices. In defiance of the world

community, it has again begun murderous campaigns against its ethnic minorities, and produced even more refugees and IDPs. The UN needs to act, and to act now.

And finally, the first six North Korean refugees processed for resettlement in the U.S. have arrived. I am pleased that the refugee provisions of the North Korea Freedom Act of 2004 are at long last being implemented.

We welcome today Assistant Secretary of State for Population, Refugees and Migration (PRM) Ellen Sauerbrey to her first appearance before the House of Representatives. We hope and trust this will part of a constructive collaboration on the vital issues you handle for our country at the Department of State. I want at the outset to commend you and PRM for the outstanding work you have been doing to fulfill our commitment to victims of trafficking and to combat this modern version of slavery. I look forward to hearing your view of the most pressing challenges facing refugees worldwide, and what help you need from us to do your work.

I note that in 2005, some 996 million from all sources was spent or obligated for your bureau, and that this is projected to decrease to 914 million from all sources USDOL for 2006, with perhaps 950 million counting the supplemental request. Further, for 2007, the President has requested only 888 million USDOL. This is a large decrease from 2005 and 2006. About 330 million was obligated for overseas assistance to Africa in 2005, yet the President is only asking for 236 million for 2007. How will this affect our ability to cope with the increasing crises of refugee protection worldwide, and especially in Africa? Will some of this be made up in other ways?

I and many other members of Congress have long opposed the exaggerated emphasis on repatriation, rather than resettlement of refugees. This policy harms not only the refugees we have repatriated, but also countless thousands of others, because it reduces the moral authority which the United States can exercise in persuading other countries not to force people back to danger. Likewise I have long supported higher numbers for refugee admissions. Even in the years of highest refugee admissions (over 100,000), they represented only a tiny fraction of total immigrants. Yet not only is this year's ceiling of 70,000 too low, the actual projected intake is lower still, 54,000, and there are serious doubts that even that number can be reached.

I must also express my concern that we are not doing enough to protect and resettle Montagnard refugees who have fled to Cambodia, or to protect those who have been repatriated to Vietnam, often involuntarily. There is ample evidence that Montagnards who attempt to flee Vietnam, even if not persecuted before, will be persecuted after forced repatriation. They are subject, at the least, to constant surveillance and harassment, often to physical abuse, torture and imprisonment. Right now there are several dozen Montagnards in Cambodia who have been turned down by UNHCR, but referred to us for further consideration. I urge that their cases be given full consideration, and that they not be repatriated involuntarily.

Finally, I ask the State Department to reopen for consideration the cases of those remaining stateless Vietnamese refugees in the Philippines. A large number were promised Philippine residence. This has not been granted, and is never likely to be. A smaller number attempted to enter the U.S. fraudulently, and have been forever barred. I would ask that their cases be re-examined. If the fraud they committed was minor and only due to their desperate situation, I would ask that they be shown compassion and be allowed to reunite with their families.

We also welcome distinguished witnesses Rachel Brand, Assistant Attorney General for the Office of Legal Policy, the Department of Justice (DOJ), and Paul Rosenzweig, Acting Assistant Secretary for Policy Development, Department of Homeland Security (DHS). I hope that they and Ms. Sauerbrey can deal with several other pressing issues.

The United States is the acknowledged world leader on refugee issues. No nation contributes more to help refugees, no nation accepts more refugees for resettlement than the U.S., even if it is true that we should do more. Our defense of refugees is one of our proudest answers to those who would denigrate the role of our nation in world affairs.

But two major problems are wreaking havoc with our immigrant resettlement program. Our immigration law (INA-Immigration and Naturalization Act), as amended by the Patriot act and the Real ID Act, seeks to exclude from our shores all terrorists, and all those who would aid and abet them. It therefore renders inadmissible all those who have knowingly given material support to terrorist groups. Not just those who pull the trigger or plant the bomb, but all those who facilitate terrorism ought to be excluded from the blessings of life in America.

But Congress knew that there would be situations where an otherwise qualified refugee should not be excluded because his or her support was unwitting, involuntary, or so minor or inconsequential that no reasonable person could conclude that it had facilitated a terrorist act. Congress therefore gave the executive branch the authority to waive material support grounds for inadmissibility, and charged the Secretaries of States and Homeland Security, and the Attorney-General, to come up with procedures and guidelines to make such waivers. The Real ID Act became law just over a year ago (May 11, 2005). Yet no such guidelines have been issued, despite repeated promises that they were imminent. We are more than half-way through the fiscal year; without quick action, we will not be able to come close to our immigration target of 54,000 refugees resettled.

As I mentioned previously, we all welcomed the Secretary of State's recent waiver on Friday May 5 of the "material support" provision for some 10,000 Burmese refugees in the Tham Hin (TOM HIN) refugee camp. But that waiver, unfortunately, only applies to this particular group of refugees, and will not apply to thousands of others: Colombians, other Burmese, Cubans who offered support to armed opponents of Castro in the 1960's; Hmong refugees in Thailand; Vietnamese Montagnard refugees in Cambodia; Liberians and Somalis. It has reportedly also prevented some 500 asylum seekers in the United States from being granted permanent refuge here. The State

Department or the Attorney General will have to seek separate waivers for each of those individuals or groups.

It will also not help many of the refugees even at Tham Hin (TOM HIN) who have been members of the Karen National Union, the armed resistance group which defends this persecuted ethnic group from the murderous Burmese junta. And here we come to the second major problem, the definition of a “terrorist group.”

Most of us think we know what terrorism, terrorists and terrorist groups are. Terrorism is violence directed against innocent civilians to further some political aim, and terrorist and terrorist groups do just that. Our law calls on the Secretary of State to designate certain groups as terrorist. Other groups take up arms to resist tyrannical regimes, just as our Founding Fathers engaged in armed resistance to a relatively benign despotism. But we have been told that the current law does not allow such distinctions. There must be a way to distinguish between genuine terrorists, and legitimate resistance groups. If current law does not do so, then we need to fix it. I would welcome suggestions from our panelists as to how we need to change the law so that it no longer reaches such absurd results.

But let me move from abstract provisions of law and numbers to real cases. I hope these are exaggerations, but I fear that they are not

In Sierra Leone a woman was kept captive in her house for four days by guerrillas. The rebels raped her and her daughter and cut them with machetes. She would normally be eligible to come to safety in the United States. But she has been put on indefinite hold — because American law says that she provided "material support" to terrorists by giving them shelter.

During the war in Liberia, rebels came to a woman’s home, murdered her father in front of her and then raped her repeatedly. The rebels then abducted her, held her hostage, and forced her to cook and wash for them. After she escaped to a refugee camp, the DHS considered the tasks she had performed for the rebels as "material support," and she is on hold.

In Colombia, a paramilitary group kidnapped a young man and forced him to dig graves along with other captives. The victims, many of whom were shot when their work was finished, never knew if one of the graves would become their own. This man escaped, but he would be barred from resettlement in the United States under the “material support” provision because he provided “services” to a terrorist organization when the paramilitaries forced him to dig graves, including possibly his own.

In Colombia, the leftist guerrilla group FARC (Fuerzas Armadas Revolucionarios de Colombia) often kidnaps civilians and demands ransom from their relatives. FARC also requires the payment of a "war tax" from Colombians in the regions it controls, upon threat of serious harm. Nearly 2,000 Colombians facing death or violence who paid such

ransoms or "taxes" were determined by the United Nations to be refugees, but they have been denied U.S. resettlement for providing "material support" to terrorists.

FARC guerrillas killed a farmer who couldn't pay the $250 they demanded. They raped his wife and her sister. Because the FARC had taken livestock from the farm, U.N. refugee officers feared the women would be rejected by the United States for providing support to terrorists. Fortunately, the UN settled the women in another country, as it does now with all Colombian refugees.

It has been reported that DHS has interpreted the laws so rigidly that one DHS lawyer argued in an immigration appeals case that any level of support -- as little as a dime provided under duress or unwittingly -- would bar a deserving refugee from U.S. entry. A judge noted that, under this interpretation, an Afghan who aided the Northern Alliance against the Taliban would be denied refuge. The fact that the U.S. was allied to the Northern Alliance to defeat the Taliban and al-Quaeda would make no difference. I sincerely hope our witnesses can refute me on this point.

The Northern Alliance are not the only U.S. allies who are barred. Many Vietnamese Montagnards fought alongside U.S. forces during the Vietnam War and were then murderously oppressed by the Vietnamese government. During the war, the United States helped arm a Montagnard group called the United Front for the Liberation of Oppressed Races (FULRO), which continued to struggle for autonomy after the war ended. This group ceased to exist in 1992, when a band of nearly 400 fighters disarmed and were resettled in North Carolina. Now the group is being treated as a terrorist organization, and 11 Montagnards still stuck in Cambodia would be denied refugee status because in the past they had offered the group "material support." Tibetan refugees in Nepal, who were trained by the CIA to try and liberate Tibet from China, Cubans who fought against Castro, or aided those who did, all would be barred from the U.S. Jews who bravely resisted Nazi terror and survived to tell about it would have faced exclusion if the law were interpreted in the past as it is now.

In his second inaugural address, President Bush made a stirring commitment to oppressed people yearning to be free: "All who live in tyranny and hopelessness can know: the United States will not ignore your oppression, or excuse your oppressors. When you stand for your liberty, we will stand with you." Now is the time to make good on these words: we must not abandon to death, squalor and hopelessness those who have heeded our words and "stood up for their liberty."

After years of effort, and with great bipartisan support, the International Religious Freedom Act (IRFA) of 1998 became law. It recognized the crucial importance of religious liberty in our foreign policy. IRFA recognized that claims of religious persecution and their adjudication raised many complicated issues, and dealt specifically with such issues. Sections 602 and 603 called for specific training for all consular officers, indeed for all Foreign Service Officers who deal with refugee admissions, all officers of the Justice Department (and now the Department of Homeland Security as well), who adjudicate asylum cases, and all immigration judges. Such training was to

"include country-specific conditions, instruction on the internationally recognized right to freedom of religion, instruction on methods of religious persecution practiced in foreign countries, and applicable distinctions within a country between the nature of and treatment of various religious practices." Congress also mandated that guidelines be developed to guarantee that contractors and foreign-hired personnel who deal with immigration issues not have biases which would prejudice them against proper evaluation of refugees' claims of religious persecution.

We would like to hear from each of our government witnesses how their departments have complied with these sections of the legislation. We are concerned that serious deficiencies exist with such training, not least because of the embarrassing reports surrounding the case of Li vs. Gonzales.

Mr. Li, a Chinese Christian, was arrested and tortured, and faced a prison sentence for belonging to an unregistered "house church." He escaped to the U.S. and applied for asylum as a refugee. The immigration judge who tried his case found that Li was credible and had suffered persecution, and should be allowed to stay.

But the INS appealed. In 2003, the Board of Immigration Appeals (BIA) reversed the judge's decision. The BIA found that Li had honestly described how police beat and tortured him with an electric shock device, forced him to sign a confession, and required him to clean public toilets without pay after his release. But it then, incredibly, ruled that Li was punished for violating laws on unregistered churches that it said China has a legitimate right to enforce. Li, the BIA concluded, feared legal action or prosecution, not persecution. Even worse, in August 2005, a three-judge panel of the federal Fifth Circuit Court of Appeals affirmed the BIA's ruling. The U.S. Attorney's Office argued that China was simply motivated by a desire to maintain social order, not to persecute based on his religious beliefs. According to the Fifth Circuit judge writing the opinion in the case, "While we may abhor China's practice of restricting its citizens from gathering in a private home to read the gospel and sing hymns, and abusing offenders, like Li, who commit such acts, that is a moral judgment, not a legal one," he wrote. Because the Chinese government tolerates Christianity, so long as it's practiced in a registered group, the Fifth Circuit concluded that reasonable and substantial evidence supported the BIA's decision that Li was punished for illegal activities and not for his religion.

After protests by religious and other human rights groups, including by the US Commission on International Religious Freedom (USCIRF) and the office of the United Nations High Commission for Refugees (UNHCR), DHS on October 4, 2005 asked the BIA to vacate its decision, which it did two days later. In November, the Fifth Circuit followed suit and vacated its decision. Justice finally triumphed, but this case betrays almost complete ignorance of IRFA (the Appeals Court decision does not even mention IRFA in its decision) and of the standards it mandates in judging religious persecution on the part of many officials. I would like to hear what has been done to avoid such travesties in the future.

Section 604 of the IRFA bars the entry into the United States of any alien who, while serving as a foreign government official, was responsible for or directly carried out particularly severe violations of religious freedom. In March last year we had a tremendous controversy over the visa of Governor Modi of Gujarat State in India, who had been complicit in the murderous persecution of Muslims in his state. The outcry in Congress and throughout the country led to the revocation of his visa. I would be interested in knowing what policies are in place to deny visas, and to deny entry, to those who are consistent violators of religious freedom.

I am also concerned with how expedited removals and interdiction at sea may be affecting genuine refugees. I am concerned that the USCIS Asylum Corps, who have the expertise and training to deal with refugees, may lose its refugee protection functions in the expedited removal process. This would be unfortunate, to say the least. The so-called "wet foot/dry foot" policy, whereby Cuban refugees who make it to dry land in the U.S. are given full consideration for U.S. resettlement, but those interdicted at sea are subject to almost certain repatriation to one of the most odious regimes on earth, is deeply troubling. According to the Congressional Research Service, in 2005, 2,700 Cubans were interdicted at sea. Approximately 2,400 expressed a fear of return. Of those, DHS determined that about 60 had a credible fear of return to Cuba. They were taken to the Guantanamo Bay detention center for further screening. At Guantanamo, some 19 were found to have a well-founded fear and were referred to DOS for third country resettlement. That is less than a tenth of a percent. Something has got to be dreadfully wrong in the process. That people would try so desperately and at such high risk to leave Cuba, yet nearly none had any fear of persecution, is so unique a phenomenon that it is scarcely credible. I will be interested in hearing how this could be happening.

We shall now hear from our panel of government witnesses.